

AMENDED IN ASSEMBLY APRIL 11, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 756**

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**Introduced by Assembly Member Melendez**

February 21, 2013

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An act to add Chapter 7 (commencing with Section 21189.50) to Division 13 of the Public Resources Code, relating to environmental quality.

### LEGISLATIVE COUNSEL'S DIGEST

AB 756, as amended, Melendez. California Environmental Quality Act: judicial review: public works projects.

The California Environmental Quality Act (~~CEQA~~), *referred to as CEQA*, requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (~~EIR~~), *referred to as an EIR*, on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.

The Jobs and Economic Improvement Through Environmental Leadership Act of 2011 requires that any action or proceeding alleging that a public agency has approved or is undertaking a leadership project certified by the Governor, as specified, in violation of CEQA be conducted in accordance with specified streamlining benefits. The act

also requires the preparation and certification of the administrative record for a leadership project that is certified by the Governor to comply with certain procedures. The act requires the draft and final EIR of a leadership project to include a specific notice relating to required procedures for judicial actions challenging the certification of the EIR or the approval of a project described in the EIR.

This bill would also apply these provisions to a public works project, defined to mean an infrastructure project carried out by the city, county, *special district*, or state government or contracted out to a private entity by the *special district* or local or state government. By requiring a lead agency to use these alternative procedures in preparing and certifying the administrative record, this bill would impose a state-mandated local program. The bill would also authorize the Judicial Council to adopt Rules of Court to implement these provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 7 (commencing with Section 21189.50)  
2     is added to Division 13 of the Public Resources Code, to read:  
3  
4     CHAPTER 7. JUDICIAL REVIEW OF PUBLIC WORKS PROJECTS  
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6     21189.50. “Public works project,” for purposes of this chapter,  
7     means an infrastructure project carried out by the city, county,  
8     *special district*, or state government, or contracted out to a private  
9     entity by a city, county, *special district*, or state government.  
10    Infrastructure projects include projects relating to transportation,  
11    such as the construction and maintenance of roads, bridges,  
12    airports, and ports, and the placement of traffic signs and street  
13    lights, projects relating to public health-related buildings such as  
14    hospitals and urgent care facilities, projects relating to public safety

1 buildings such as law enforcement stations and correctional  
2 facilities, projects relating to water quality and water waste  
3 treatment facilities and their related infrastructures, and projects  
4 relating to electrical grid improvements, landscaping, seismic  
5 retrofitting, and technological retrofitting.

6 21189.51. (a) Notwithstanding any other law, any action or  
7 proceeding alleging that a public agency has approved or is  
8 undertaking a public works project in violation of this division  
9 shall be conducted in accordance with the following streamlining  
10 benefits:

11 (1) The action or proceeding shall be filed in the court of appeal  
12 with geographic jurisdiction over the project.

13 (2) ~~Any~~ A party bringing a claim described in this section shall  
14 also file concurrently any other claims alleging that a public agency  
15 has granted land use approvals for the public works project in  
16 violation of the law. The court of appeal shall have original  
17 jurisdiction over all those claims.

18 (3) The court of appeal shall issue its decision in the case within  
19 175 days of the filing of the petition.

20 (4) The court may appoint a master to assist the court in  
21 managing and processing the case.

22 (5) The court may grant extensions of time only for good cause  
23 shown and in order to promote the interests of justice.

24 (b) The Judicial Council may adopt rules of court to implement  
25 this chapter.

26 21189.52. Notwithstanding any other law, the preparation and  
27 certification of the administrative record for a public works project  
28 shall be performed in the following manner:

29 (a) The lead agency for the project shall prepare the  
30 administrative record pursuant to this division concurrently with  
31 the administrative process.

32 (b) All documents and other materials placed in the  
33 administrative record shall be posted on, and be downloadable  
34 from, an Internet Web site maintained by the lead agency  
35 commencing with the date of the release of the draft environmental  
36 impact report.

37 (c) The lead agency shall make available to the ~~public~~ *public*,  
38 in a readily accessible electronic ~~format~~ *format*, the draft  
39 environmental impact report and all other documents submitted

1 to, or relied on by, the lead agency in the preparation of the draft  
2 environmental impact report.

3 (d) A document prepared by the lead agency or submitted by  
4 the applicant after the date of the release of the draft environmental  
5 impact report that is a part of the record of the proceedings shall  
6 be made available to the public in a readily accessible electronic  
7 format within five business days after the document is released or  
8 received by the lead agency.

9 (e) The lead agency shall encourage written comments on the  
10 project to be submitted in a readily accessible electronic format,  
11 ~~and~~ *and, except as provided in subdivision (f),* shall make any  
12 comment available to the public in a readily accessible electronic  
13 format within five days of its receipt.

14 (f) Within seven business days after the receipt of any comment  
15 that is not in an electronic format, the lead agency shall convert  
16 that comment into a readily accessible electronic format and make  
17 it available to the public in that format.

18 (g) The lead agency shall certify the final administrative record  
19 within five days of its approval of the project.

20 (h) Any dispute arising from the administrative record shall be  
21 resolved by the court of appeal pursuant to Section 21189.51.

22 21189.53. The draft and final environmental impact report  
23 shall include a notice in no less than 12-point type stating the  
24 following:

25  
26 “THIS EIR IS SUBJECT TO CHAPTER 7 (COMMENCING  
27 WITH SECTION 21189.50) OF DIVISION 21 OF THE PUBLIC  
28 RESOURCES CODE, WHICH PROVIDES, AMONG OTHER  
29 THINGS, THAT ANY JUDICIAL ACTION CHALLENGING  
30 THE CERTIFICATION OF THE EIR OR THE APPROVAL OF  
31 THE PROJECT DESCRIBED IN THE EIR IS SUBJECT TO  
32 THE PROCEDURES SET FORTH IN SECTION 21189.51 OF  
33 THE PUBLIC RESOURCES CODE AND MUST BE FILED  
34 WITH THE COURT OF APPEAL. A COPY OF CHAPTER 7  
35 OF DIVISION 21 OF THE PUBLIC RESOURCES CODE IS  
36 INCLUDED IN THE APPENDIX TO THIS EIR.”

37  
38 21189.54. The provisions of this chapter are severable. If any  
39 provision of this chapter or its application is held invalid, that

1   invalidity shall not affect other provisions or applications that can  
2   be given effect without the invalid provision or application.

3   SEC. 2. If the Commission on State Mandates determines that  
4   this act contains costs mandated by the state, reimbursement to  
5   local agencies and school districts for those costs shall be made  
6   pursuant to Part 7 (commencing with Section 17500) of Division  
7   4 of Title 2 of the Government Code.

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